EVIDENCE—OPINION—WHETHER AUTOMOBILE COULD HAVE BEEN STOPPED SOONER.—In a suit against D for running over and killing P's infant son, D was asked by his attorney whether he could have stopped the automobile sooner than he did. Upon objection, the court *held,* that the question was improper since it called for conclusions which should be drawn by the jury from the facts given by the witness. *Taylor* v. *Lewis,* (Ala., 1921), 89 So. 581.

The general rule is that a witness must be confined to a statement of the facts and will not be permitted to testify to opinions, inferences, or conclusions based on the facts. See 3 WIGMORE, EVID., § 1917. When all the facts are before the jury it is superfluous to add, by way of testimony, inferences which the jury can equally well draw for themselves. 3 WIGMORE, EVID., § 1918; 1 GREENLEAF, EVID., § 441 b. The reason is not that it is attempting to usurp the functions of the jury, as the principal case intimates. *Beaubien* v. *Cicotte,* 12 Mich. 459. Nor is it because an opinion should not be given on the very issue before the jury. *Snow* v. *Boston and Maine R. Co.,* 65 Me. 230. It is merely because the testimony is superfluous and unnecessary. However, in the principal case it would seem that it would be impossible to place before the jury all the facts upon which the possibility of stopping the automobile depended, and if the inference of a witness would be helpful to them it should be admitted. 3 WIGMORE, EVID., § 1921. Witnesses of ordinary ability may testify as to the speed of automobiles. *Denver, O. & C. Co.* v. *Krebs,* 255 Fed. 543; *Creedon* v. *Galvin,* 226 Mass. 140; 3 CHAMBERLAYNE, EVID., § 2086. But a witness must be shown to be especially fitted by experience in operation to testify as to the distance in which one may be stopped. *Goldblatt* v. *Brocklebank,* 166 Ill. App. 315; *Hamilton, H. & Co.* v. *Larrimer,* 183 Ind. 429; BERRY, AUTOMOBILES, 1012. Had the defendant been shown thus qualified it would seem that his opinion should have been admitted. *Scholl* v. *Grayson,* 147 Mo. App. 652; *Crandall* v. *Krause,* 165 Ill. App. 15.

EVIDENCE—WITNESSES—COURT CANNOT REQUIRE PROSECUTRIX IN RAPE CASE TO SUBJECT HERSELF TO EXAMINATION BY PHYSICIAN.—Prosecutrix in a rape case denied that she had previous intercourse with accused, and asserted she had never had intercourse with any man. Accused then requested that court order the prosecutrix to undergo a physical examination, asserting that if the examination revealed the fact that she was not virtuous it would support the theory that she had been indulging in sexual intercourse with defendant, and tend to discredit her testimony as to the alleged assault. *Held,* there is no rule of law that would authorize the trial judge to require a witness to subject herself to such an examination, or any right to enforce such an order if made. *Rettig* v. *State* (Tex. 1921), 233 S. W. 839.

Whether or not the courts have inherent power to compel parties to submit their persons to physical examination is in conflict. In *Union Pac. Ry. Co.* v. *Botsford,* 141 U. S. 250, which was a civil action for injury to the person, the court refused to give such an order on the ground that the power to compel a physical examination was "never known to the common law,

except in a very small number of cases based upon special reasons and upon ancient practice, coming down from ruder ages, now mostly obsolete in England, and never, so far as we are aware, introduced into this country." The majority of courts, however, in civil actions for injuries to the person, assert that the court does have the power to compel the plaintiff to undergo a physical examination. *Schroeder* v. *C. R. I. & P. Ry. Co.*, 47 Ia. 375; 3 WIGMORE ON EV., § 2220. This power has also been exercised by the courts when the marriage relation has been sought to be annulled on the ground of impotency or incapacity to perform the marital act. See note to *Cleveland Ry. Co.* v. *Huddleston*, 68 A. S. R. 251. The courts, however, have been very reluctant to exercise this power in rape or cognate offenses where the prosecutrix has nothing to gain. In *McGuff* v. *State*, 88 Ala. 147, the court said: "It may well be doubted in rape cases whether the court has power to make an order compelling the inspection of the private person of a prosecutrix, in the event of her refusal to submit to such examination. If such right exists at all, we should hold it to be a matter of judicial discretion, to be exercised only in cases of extreme necessity, and not a subject of review on appeal to this court." The court has also refused to grant such an order on the ground of public policy because "modest women would oftentimes doubtless prefer to bear with the wrong visited upon them than to expose themselves to the humiliation of a physical examination." *Thomas* v. *Commonwealth*, 188 Ky. 509. And in prosecutions for slander the court has refused to order the prosecutrix to submit to a physical examination. *Kern* v. *Bridwell*, 119 Ind. 226. One reason why the courts more readily order a physical examination in civil cases than in criminal actions is that the court may easily enforce its order in such cases by declaring a non-suit should the order be disobeyed. Whether the court is without authority to grant such an order, as is held by the principal case, may well be doubted; it is certain that the courts have hesitated to exercise such a power.

HUSBAND AND WIFE—HUSBAND'S LIABILITY TO MERCHANT FOR NON-NECESSARIES PURCHASED BY DESERTING WIFE.—Appellant and wife had been married three years. During that time the wife had made two purchases of clothing which was not necessary upon the credit of the appellant and he had paid the bills. On the day that the wife deserted the appellant she purchased on his credit non-necessary clothing to the value of $175. She started divorce proceedings three days later, and the appellant then notified the appellee that he would no longer be responsible for debts contracted by his wife. *Held*, appellant was liable for the value of the goods purchased. *Martz* v. *Selig Dry Goods Co.* (Ind. App. 1921), 131 N. E. 528.

It is well settled that the husband is liable for necessaries purchased by his wife. As to what may constitute necessaries, see 13 MICH. L. REV. 262. The liability continues after a separation due to the fault of the husband, *Wisnom* v. *McCarthy*, (Cal.), 192 Pac. 337, but not unless the plaintiff has shown that the separation was due to the husband's misconduct. *Vusler* v. *Cox*, 53 N. J. Law 516. However, to establish liability for non-necessaries it must be shown that the wife was the express or implied agent of the hus-